

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Circuit Mediation Office

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<http://www.ca9.uscourts.gov/mediation>

MEDIATION QUESTIONNAIRE

This form is available in a fillable version at http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Mediation_Questionnaire.pdf.

The purpose of this questionnaire is to help the court's mediators provide the best possible mediation service in this case; it serves no other function. Responses to this questionnaire are **not** confidential. Appellants/Petitioners must electronically file this document within 7 days of the docketing of the case. 9th Cir. R. 3-4 and 15-2. Appellees/Respondents may file the questionnaire, but are not required to do so.

9th Circuit Case Number(s):	17-15307
District Court/Agency Case Number(s):	4:15-cv-03783-JSW
District Court/Agency Location:	Northern District of California, Oakland Courthouse
Case Name:	MONICA SUD, et al. v. COSTCO WHOLESALE CORPORATION,
If District Court, docket entry number(s) of order(s) appealed from:	Docket No. 94; Docket No. 93; Docket No. 76
Name of party/parties submitting this form:	MONICA SUD, individually, and on behalf of all others similarly situated

Briefly describe the dispute that gave rise to this lawsuit.

This is a putative consumer class action. Plaintiffs allege that Costco knowingly sells farmed Southeast Asian prawns that are derived from a supply chain tainted by slave labor, human rights abuses and human trafficking. Plaintiffs allege that Costco should—but does not—disclose the tainted supply chain to consumers. Plaintiffs also allege that Costco's affirmative statements about its human rights policies are misleading. Plaintiffs allege claims under California Business & Professions Code § 17200, California Business and Professions Code Section 17500, et seq., and the Consumer Legal Remedies Act, Civil Code Section 1750, et seq.

Briefly describe the result below and the main issues on appeal.

Plaintiffs appeal from the District Court's January 24, 2017 Order dismissing the complaint without leave to amend. Plaintiffs appeal only the decision as it applies to Costco, and not to the CP Foods Defendants. In dismissing the case, Judge Jeffrey White held that Costco did not owe Plaintiffs a duty to disclose facts regarding the tainted supply chain and further held that the FAL does not apply to omissions. The Court did not reach certain of Costco's other arguments, including the argument that Plaintiffs' claims are barred by the safe harbor doctrine (this relates to Cal. Civ. Code § 1714.43, the Transparency in Supply Chains Act, which went into effect in California in 2012 and requires certain large retailers to disclose their "efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale").

(Continue to next page)

Describe any proceedings remaining below or any related proceedings in other tribunals.

There are no remaining proceedings before the District Court. Plaintiffs are not aware of related proceedings in other tribunals. However, following the filing of *Sud v. Costco et al.* there were a number of putative class actions filed by other plaintiffs (represented by other counsel) against other companies, alleging non-disclosure of tainted supply chains. One such case is *Barber v. Nestlé USA, Inc.* (C.D.Cal. Dec. 9, 2015, No. SACV 15-01364-CJC(AGRx)), at last check these cases are on appeal to the Ninth Circuit.

Provide any other thoughts you would like to bring to the attention of the mediator.

N/A, see prior response

*Any party may provide additional information **in confidence** directly to the Circuit Mediation Office at ca09_mediation@ca9.uscourts.gov. Provide the case name and Ninth Circuit case number in your message. Additional information might include level of interest in including this case in the mediation program, the case's settlement history, issues beyond the litigation that the parties might address in a settlement context, or future events that might affect the parties' willingness or ability to mediate the case.*

CERTIFICATION OF COUNSEL

I certify that:

☒ a current service list with telephone and fax numbers and email addresses is attached (see 9th Circuit Rule 3-2).

☒ I understand that failure to provide the Court with a completed form and service list may result in sanctions, including dismissal of the appeal.

Signature

("s/" plus attorney name may be used in lieu of a manual signature on electronically-filed documents.)

Counsel for

How to File: Complete the form and then convert the filled-in form to a static PDF (File > Print > PDF Printer or any PDF Creator). To file, log into Appellate ECF and select File Mediation Questionnaire. (*Use of the Appellate ECF system is mandatory for all attorneys filing in this Court, unless they are granted an exemption from using the system.*)

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*COURTESY COPY, PLAINTIFFS ARE NOT
APPEALING AS TO THE CP ENTITIES*